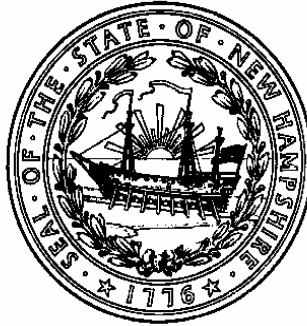


STATE OF NEW HAMPSHIRE



GOVERNOR'S COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE

OFFICE OF THE ATTORNEY GENERAL

LAW ENFORCEMENT: A MODEL PROTOCOL FOR POLICE RESPONSE TO DOMESTIC VIOLENCE CASES

Second Edition, 2004

“This project was supported by Grant No. 2001WFBX0007 awarded by the Bureau of Justice Assistance, Office of Justice Programs, US Department of Justice. The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program offices and bureaus: Bureau of Justice Assistance, Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US Department of Justice.”

January 2004

To All Law Enforcement Agencies:

I am pleased to enclose the updated model law enforcement response to domestic violence cases. Dozens of dedicated professionals, including police chiefs, other law enforcement officials and domestic violence experts have put in countless hours over the past two years to revise the original protocol. Their objective was to define “best practices” for law enforcement when encountering situations involving domestic violence. This protocol is the result of those concerted efforts. I appreciate their dedication and commitment to the issue.

Like its predecessor, this protocol establishes a presumptive arrest policy. Under that policy, whenever an officer has probable cause to believe that a crime of domestic violence has been committed, for which arrest may not be mandated by statute (RSA 173-B, I(a) or RSA 633:3-a), the officer should nonetheless arrest unless there are compelling reasons for not doing so. If an arrest is not made, the reasons for that decision should be documented in a report.

The protocol also sets forth model procedures for police response. They were developed with the recognition that an individual department’s ability to adhere to the procedures will depend, to some degree, on the size and financial resources of the department. For that reason, the procedures are not mandatory. They are not intended to define a minimum standard of practice, nor are they intended to create substantive rights for individuals. Rather, their purpose is to define a standard to which all law enforcement agencies should strive.

Consistent compliance with these procedures set forth in this protocol will greatly increase the effectiveness of law enforcement response to domestic violence. It will also ensure that victims of domestic violence are afforded the maximum protection under the law.

Very truly yours,

Peter W. Heed
Attorney General

DOMESTIC ABUSE INVESTIGATION CHECKLIST

POLICE DEPARTMENT

I. VICTIM (Interview separate from suspect)

- ☐ Described the victim's location upon arrival.
- ☐ Recorded victim's name, dob, address, home and work phone numbers.
- ☐ Noted time dispatched, time arrived.
- ☐ Recorded any spontaneous statements made by the victim.
- ☐ Described the victim's emotional condition.
- ☐ Described the victim's overall physical condition and appearance.
- ☐ Documented the victim's injuries in detail (**size, location and coloration**) and if medical treatment sought.
- ☐ Noted victim's relationship with suspect.
- ☐ Documented evidence of alcohol and/or other drugs consumed by victim relative to the incident.
- ☐ Recorded any history of substance/chemical use by victim.
- ☐ Noted any restraining/court orders.
- ☐ Gave victim written notice of rights and services on safety pamphlet.
- ☐ Asked victim about the presence and location of any firearms and ammunition within the dwelling.
- ☐ Asked victim about the presence and location of any deadly weapons used or threatened to be used, by the suspect.
- ☐ Received written or recorded statement from the victim.

II. SUSPECT (Interview separate from victim)

- ☐ Described the suspect's location upon arrival.
- ☐ Recorded suspect's name, dob, address, home and work phone numbers.
- ☐ Recorded any spontaneous statements made by the suspect.
- ☐ Described the suspect's emotional condition.
- ☐ Described the suspect's overall physical condition and appearance.
- ☐ Described the suspect's injuries in detail (**size, location and coloration**) and if medical treatment sought.
- ☐ Documented evidence of alcohol and/or other drugs consumed by suspect during incident.
- ☐ Asked suspect about the presence, location, type of firearms and ammunition, located within the dwelling.
- ☐ Asked suspect about the presence of other deadly weapons located within the dwelling.
- ☐ **If arrested**, advised Miranda rights, asked suspect if he/she wanted to make a statement, knew of restraining order, and/or understood order.
- ☐ Received written or recorded statement from suspect.

III. CHILDREN

- ☐ **Every** report must note if children live in the home, whether or not they are present, and child's relationship to each person present at scene.
- ☐ Listed names, ages, school and teacher for each child present.
- ☐ Interviewed each child alone.
- ☐ Recorded any spontaneous statements made by the children.
- ☐ Described each child's emotional state.
- ☐ Described and documented each child's injury, if applicable.
- ☐ Notified DCYF of any child's injuries.

IV. WITNESSES

- ☐ Interviewed the reporting party.
- ☐ Identified all witnesses and interviewed them separately.
- ☐ Recorded all witnesses' addresses and phone numbers.
- ☐ Recorded names and addresses of emergency personnel.
- ☐ Identified treating physician and hospital.
- ☐ Received written statements.

V. EVIDENCE

- ☐ Recorded the "911" number and incident number.
- ☐ Obtain recording of "911" call.
- ☐ Photographed the victim's injuries - received permission for additional photos in 24-48 hours.
- ☐ Photographed the suspect's injuries.

- ☐ Impounded and took into evidence all deadly weapons used or threatened to be used.
- ☐ Took into evidence any objects thrown or otherwise used in incident.
- ☐ Attached related reports, photos and evidence tags.

VI. OTHER

- ☐ Incident was domestic violence abuse and/or violation of a protective order.
- ☐ **As required by RSA 173-B**, removed all firearms and ammunition present in dwelling.

ABUSE DEFINED:

- a. Assault or reckless conduct (RSA 631:1 through 631:3)
- b. Criminal Threatening (RSA 631:4)
- c. Sexual Assault (RSA 632-A:2 through 632-A:5)
- d. Interference with freedom (RSA 633:1 through 633:3-a)
- e. Destruction of property (RSA 634:1 & 634:2)
- f. Unauthorized entry (RSA 635:1 & 635:2)
- g. Harassment (RSA 644:4)

TABLE OF CONTENTS

PURPOSE	1
POLICY	1
A. VICTIM CONFIDENTIALITY	2
B. POLICE OFFICERS AS PERPETRATORS OF DOMESTIC VIOLENCE.....	2
DEFINITIONS OF DOMESTIC VIOLENCE AND PROTECTED PERSONS	4
A. DEFINITIONS OF DOMESTIC VIOLENCE	4
B. WHO MAY FILE FOR A DOMESTIC VIOLENCE PROTECTIVE ORDER?	5
C. EQUITY ORDERS OF PROTECTION	6
VICTIM NOTIFICATION	7
DOMESTIC VIOLENCE VICTIM RIGHTS FORM	8
ROLE OF THE DISPATCHER	9
ROLE OF THE FIRST RESPONDER	11
A. OFFICER SAFETY CONCERNS	11
B IDENTIFYING THE PRIMARY PHYSICAL AGGRESSOR	12
C. ON- SCENE INVESTIGATION	13
D. PHOTOGRAPHS	15
DEALING WITH CHILDREN	17
THE ARREST DECISION	18
A. PROCEDURE WHEN ARREST IS NOT POSSIBLE	19
B. PROTECTION BY POLICE OFFICERS	20
C. EMERGENCY CARE, LIMITATIONS AND LIABILITY 173-B:12 ..	21
CHARGING DECISIONS – ISSUES FOR PROSECUTORS	22
A. CHARGING	22
B. PRIOR CONVICTIONS AND THE IMPACT ON CHARGING	23
C. IF NO CHARGES ARE FILED	24

D. SENTENCING	24
BAIL ISSUES	26
A. BAIL WITHOUT AN UNDERLYING PROTECTIVE ORDER	26
B. BAIL WITHOUT AN UNDERLYING PROTECTIVE ORDER WHEN A THREAT HAS BEEN POSED	26
C. BAIL WITH A PROTECTIVE ORDER IN PLACE	27
D. VICTIM NOTIFICATION OF BAIL ORDERS	27
FIREARMS ISSUES	29
A. AS DEFINED IN THE DEFINITION SECTION (PAGE 4)	29
B. RELINQUISHMENT	29
a. Emergency Telephonic Orders	30
b. Temporary Orders	31
c. Violations	31
d. Final Orders	32
e. Inventory	32
C. STORAGE	32
D. RETURN OF FIREARMS AND AMMUNITION	33
REPORTING	34
PROTECTIVE ORDERS	35
A. EMERGENCY TELEPHONIC ORDERS	35
B. TEMPORARY PROTECTIVE ORDERS	36
C. FINAL ORDERS	36
D. SERVICE OF ORDERS	36
E. ENFORCEMENT OF ORDERS	37
F. CIVIL STANDBYS	38
FULL FAITH AND CREDIT	40
A. ENFORCEMENT OF FOREIGN PROTECTION ORDERS	40
COURT SECURITY	42

PURPOSE

The purpose of this protocol is to provide consistent guidelines and procedures to standardize the response by law enforcement officers and other personnel involved in law enforcement intervention in domestic violence disturbances. This protocol applies to any call to the police reporting a disturbance between “family or household members” or current or former sexual or “intimate partners”. These terms are defined in RSA 173-B, the protection from abuse statute. (See the Definition section, page 4)

A standardized response will:

- ◆ Reduce the incidence and severity of domestic violence;
- ◆ Ensure the use of all means within reason to prevent further abuse as required by RSA 173-B:10;
- ◆ Promote officer safety by ensuring that officers are as fully prepared as possible to respond to domestic calls;
- ◆ Apprise the victim of his or her rights and services available; and
- ◆ Afford maximum protection and support to victims of domestic violence, through a coordinated program of law enforcement and victim assistance.

POLICY

Domestic violence is distinguished from other crimes by the fact that it has as a component an intimate relationship between the victim and the accused. Notwithstanding that difference, police should respond to domestic violence as they would to any other crime. Police should arrest and pursue criminal remedies appropriate to the crime that the police have probable cause to believe the accused has committed. In recognition of the difference between domestic violence and most other crimes, however, police also should provide victims with special assistance to help them avoid being re-victimized, including efforts to ensure that victims are informed of the services and support available to assist them.

Like its predecessor, this protocol establishes a presumptive arrest policy. Under that policy, whenever an officer has probable cause to believe that a crime of domestic violence has been committed, for which arrest is not mandated by statute (RSA 173-B, I(a) or RSA 633:3-a), the officer should nonetheless arrest unless there are compelling reasons for not doing so. If an arrest is not made, the reasons for that decision are to be documented in a report.

The protocol also sets forth model procedures for police response. They were developed with the recognition an individual department's ability to adhere to the procedures will depend, to some degree, on the size and financial resources of the department. For that reason, the procedures are not mandatory. They are not intended to define a minimum standard of practice, nor are they intended to create substantive rights for individuals. Rather, their purpose is to define a standard to which all law enforcement agencies should strive.

Consistent compliance with these procedures set forth in this protocol will greatly increase the effectiveness of law enforcement response to domestic violence. It will also ensure that victims of domestic violence are afforded the maximum protection under the law.

A. VICTIM CONFIDENTIALITY

Victims of domestic violence have privileged communication with crisis center advocates under RSA 173-C. Any communication between the victim and an advocate, without a third party present, is privileged and must remain confidential. The privilege rests with the victim, not the advocate, and may only be waived by consent of the victim. When working with crisis center advocates, it is important for law enforcement to understand that it is not the choice of an advocate whether or not to share information regarding a victim, including whether or not there has even been contact. Only a crisis center release, signed by the victim, allows an advocate to divulge any information regarding a victim. This includes whether or not the victim is residing at a crisis center shelter. The inability of advocates to disclose that information must be respected. In communities where a confidential domestic violence shelter is located, law enforcement should develop a protocol with the local crisis center regarding contacting victims believed to be residing at the shelter.

B. POLICE OFFICERS AS PERPETRATORS OF DOMESTIC VIOLENCE

In circumstances where the perpetrator of domestic violence is a police, state corrections or probation/parole officer, s/he should not be accorded special treatment – if an arrest would be otherwise warranted, it should be carried out without regard to a person's employment as a law enforcement officer.

In accordance with a court issued protective order, police departments must confiscate all firearms and ammunition in the possession, ownership or control of the defendant, including a service revolver. If the serving agency confiscates a firearm that is the property of another law enforcement agency, the law enforcement agency that owns the firearm, should be notified and should prepare a motion to the issuing Court for the return of the firearm and department issued ammunition. Because the firearm is the property of the law enforcement agency that issued it, placing it back in service (providing there was no crime associated with the firearm) shall be done in accordance with the rules and regulations of that

agency. In cases where an arrest of a police, state corrections or probation/parole officer is made, the New Hampshire Police Standards and Training Council shall be notified on Council form "G" within 15 days of the arrest POL 501.01 (a)).

DEFINITIONS OF DOMESTIC VIOLENCE AND PROTECTED PERSONS

STATUTORY REFERENCES: RSA 173-B:1 (Definitions)
RSA 173-B: 5 (Relief)
RSA 173-B: 7 (Minority not a Preclusion for Services)
RSA 173 B:10 (Protection by a Peace Officer)
RSA 173-B:11 (Victim Notification)
RSA 625:11, V (Deadly weapons)
RSA 631:1 through 3 (Assault or Reckless Conduct)
RSA 631:4 (Criminal Threatening)
RSA 632-A: 2 through 5 (Sexual Assault)
RSA 633:1 through 3-a (Interference with Freedom)
RSA 633:4 (Interference with Custody)
RSA 634:1 and 2 (Destruction of Property)
RSA 635:1 and 2 (Unauthorized Entry)
RSA 644:4 (Harassment)

A. DEFINITIONS OF DOMESTIC VIOLENCE

RSA 173-B: 1 provides the definitions of abuse under this statute. As of the date of this re-write of the protocol, the following definitions are current. The reader of this protocol is encouraged to check updates to the statutes as may be appropriate.

RSA 173-B: 1 DEFINITIONS:

I. **Abuse** - the commission or attempted commission of one or more of the following acts by a family or household member or current or former sexual or intimate partner and where such conduct constitutes a credible threat to the victim's safety:

- ◆ Assault or reckless conduct as defined in RSA 631:1 through RSA 631:3;
- ◆ Criminal threatening as defined in RSA 631:4;
- ◆ Sexual assault as defined in RSA 632-A: 2 through RSA 632-A: 5;
- ◆ Interference with freedom as defined in RSA 633:1 through RSA 633:3-a;
- ◆ Destruction of property as defined in RSA 634:1 and RSA 634:2;
- ◆ Unauthorized entry as defined in RSA 635:1 and RSA 635:2;
- ◆ Harassment as defined in RSA 644:4.

II. **Contact** means any action to communicate with another either directly or indirectly, including, but not limited to, using any form of electronic communication, leaving items, or causing another to communicate in such fashion.

III. **Cross orders for relief** means separate orders granted to parties in a domestic violence situation where each of the parties has filed a petition pursuant to this chapter on allegations arising from the same incident or incidents of domestic violence.

IV. **Deadly weapon** - as defined in RSA 625:11.

NOTE: For the purpose of this statute, firearms are specifically defined in RSA173:B1, 11.

V. **Domestic violence** - abuse as defined in RSA 173-B: 1, I.

VI. **Family or household member:**

- ◆ Spouses, ex-spouses, persons cohabiting and persons who cohabited but who no longer share the same residence.
- ◆ Parents and other persons related by consanguinity or affinity, other than minor children who reside with the defendant.

VII. **Firearm** means any weapon, including a starter gun, which is designed to or otherwise may readily be converted to expel a projectile by force of gunpowder.

VIII. **Foreign protective order** means an order enforceable under RSA 173-B: 13.

IX. **Intimate partners** means persons currently or formerly involved in a romantic relationship, whether or not such relationship was ever consummated sexually.

X. **Mutual orders for relief.** **NOTE: According to RSA 173:B mutual orders are not available.**

B. WHO MAY FILE FOR A DOMESTIC VIOLENCE PROTECTIVE ORDER?

RSA 173-B: 1, II sets forth the following specific classifications of people entitled to file petitions in matters of domestic violence:

- ◆ Spouses
- ◆ Ex-spouses
- ◆ Person cohabiting
- ◆ Persons who cohabited but who no longer share the same residence
- ◆ Parents of the defendant
- ◆ Persons related to the defendant by consanguinity

- ◆ Persons related to the defendant by affinity
- ◆ Former intimate partners
- ◆ Current intimate partners

NOTE: Minor children and stepchildren of a defendant are not entitled to be party victims under RSA 173-B. The appropriate mechanism for protection of minor children related to the defendant is RSA 169-C.

C. EQUITY ORDERS OF PROTECTION

Other types of restraining orders (e.g., neighbors, roommates, etc.) are available only through the Superior Courts.

VICTIM NOTIFICATION

RSA 173-B:11 requires that all officers **SHALL** give victims of abuse immediate and adequate notice of their right to go to the district or superior court of their county to file a petition asking for protective orders against the abusive person and to seek a private criminal complaint.

The officer **SHALL** give the victim immediate and written notice of the rights of victims and of the remedies and services available to victims of domestic violence. According to NH RSA 173-B:10(d) the written victim notification form (see next page) shall include a statement substantially as follows:

“If you are a victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety, including asking for an emergency telephonic order of protection. You may also request that the officer assist you in obtaining from your premises or curtilage, toiletries, medication, clothing, business equipment and any other items as determined by the court, and in locating and taking you to a local safe place, including but not limited to, a designated meeting place to be used as a crisis center, a family member’s or friend’s residence or similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining an ambulance. You may request a copy of the report filed by the peace officer, at no cost, from the law enforcement agency.”

DOMESTIC VIOLENCE VICTIM RIGHTS FORM

POLICE DEPARTMENT

In compliance with NH RSA 173-B:10(d) Officer _____, ID# _____

Has informed _____ of your rights as a victim of domestic violence.

The police officer has the responsibility to decide whether or not to make an arrest. An officer can arrest with or without your consent if the officer believes that a crime has been committed.

According to NH RSA 173-B:10(d): If you are a victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right:

- ◆ To request that the officer assist in providing for your safety, including asking for an emergency telephonic order of protection.
- ◆ To request that the officer assist you in obtaining from your premises or curtilage, toiletries, medication, clothing, business equipment and any other items as determined by the court.
- ◆ To request that the officer locate and take you to a local safe place, including but not limited to, a designated meeting place to be used as a crisis center, a family member's or friend's residence or similar place of safety.
- ◆ To request that the officer assist you in obtaining an ambulance, if you are in need of medical treatment.
- ◆ To request a copy of the report filed by the peace officer, at no cost, from the law enforcement agency.

In addition, as a victim of domestic violence, you have the right:

- ◆ To go the District or Superior court in your county, to file a petition asking for protective orders against the abusive person and to seek a private criminal complaint.
- ◆ To obtain an emergency telephonic protective order through the local police department if it is after court hours.

To contact the local domestic violence crisis center, which provides 24-hour support and direct services to victims of domestic and/or sexual violence. The services are free, confidential and include a 24-hour crisis line, emergency shelter and transportation, court advocacy for obtaining protective orders against the abuser, hospital and court accompaniment, support groups and resource information.

To contact the local crisis center call 1-866-644-3574 or 1-800-RELAY NH (1-800-735-2964 – TDD/Voice)

CRIME VICTIMS' ASSISTANCE PROGRAM

If you are a victim of a violent crime, or the family member or dependent of a deceased victim, you may be eligible for compensation for hospital/medical expenses, lost wages, funeral expenses and/or mental health therapy expenses, not otherwise covered by insurance. Property crimes are not covered.

Call 1-800-304-4500 for more information. If calling out of state call 1-603-271-1284

CHILD ABUSE REPORTING LINE1-800-894-5533

ROLE OF THE DISPATCHER

Officers rely on dispatchers to describe in as much detail as possible what has and what is occurring throughout a call. **Domestic violence calls should be given a high priority.** Whenever possible, and consistent with department policy, the dispatcher should assign a back-up unit. The dispatcher receiving a domestic violence call should attempt to keep the caller on the telephone, if safety permits. Domestic violence calls should be coded as such for data collection on the incidence of domestic violence calls.

Information obtained should include:

- ◆ The exact nature of the incident; when it happened; anyone hurt?
- ◆ Name of caller;
- ◆ Name of victim;
- ◆ The telephone number where a caller can be called back;
- ◆ Whether firearms or other deadly weapons are involved;
- ◆ The exact location of the incident;
- ◆ The precise location of the victim;
- ◆ The precise location of the suspect;
- ◆ The precise location of the children, or other individuals present at the scene, if applicable;
- ◆ The precise location of any firearms and/or other weapons;
- ◆ The location of the entryways; and
- ◆ Whether the use of a weapon in the incident was threatened.

In trying to determine the suspect's state of mind, the caller should be asked about:

- ◆ Alcohol and/or other drug use; and
- ◆ Mental illness including depression.

The dispatcher should determine:

- ◆ Whether an ambulance is needed;
- ◆ If there are any warrants in effect for any party present;

- ◆ Whether an active protective order is in effect and if so, the conditions of the order; and
- ◆ Whether bail restrictions are in effect.

When the officer indicates that he or she is in position to meet with the caller, the dispatcher should instruct the caller to meet the officer at the entrance. **(providing it is safe for the caller to leave his or her location).**

If the caller has hung up, the dispatcher should call back to determine the best and safest way for the officer to gain entry.

NOTE: It is important to get as much information as possible from the victim, other household members and the arriving officer(s). Recorded information can be an essential tool for the investigating officer.

ROLE OF THE FIRST RESPONDER

A. OFFICER SAFETY CONCERNS

- ◆ Officers should be mindful that in the majority of cases the parties know that law enforcement is responding.
- ◆ Whenever staffing allows, a minimum of two officers should respond to a domestic violence call.
- ◆ Officers should obtain all available information from the dispatcher before arriving at the scene and should notify the dispatcher upon arrival.
- ◆ Officers should avoid the use of sirens and emergency lights while responding unless the officers believe that the victim is in imminent danger of serious bodily injury.
- ◆ Statistically, the first minute after arrival at the scene is the most dangerous for the responding officer.
- ◆ Officers should be alert to vehicles and people leaving the immediate area.
- ◆ Officers should keep in mind that the threat to their safety may be waiting outside the scene.
- ◆ Pause outside the scene and attempt to determine what is taking place inside.
- ◆ ***STOP, LOOK AND LISTEN.***
- ◆ Unless exigent circumstances require forced entry, such as the necessity to stop what officers believe to be an ongoing physical assault or a felony, the officers should seek to have one of the parties admit them to the residence. **In the absence of exigent circumstances, the officer has no right to enter, but shall make reasonable efforts to ascertain the well being of those present.**
- ◆ Officers should remain until they reasonably believe that there is no immediate threat of physical harm, and that they have taken appropriate measures to ensure the safety of those present, or an arrest is made and a criminal investigation has begun.

***NOTE:** The 911 call itself may in some instances support a determination of exigent circumstances or include permission to enter. The dispatch tape may also be admissible evidence in court proceedings as excited utterances (especially if the victim becomes uncooperative or hostile.)

Officers should establish control by:

- ◆ Separating the victim and the suspect. **NOTE:** If responding alone, the officer should keep both parties in view. (Position the victim so the officer can keep the suspect in view and so the suspect cannot visually intimidate the victim.) **NEVER** lose sight of the parties involved;
- ◆ Removing the parties from areas of the home that can pose the most threat, e.g., kitchen;
- ◆ Identifying and taking physical control of any weapons, including but not limited to firearms, knives, etc.;
- ◆ Assessing injuries, administering first aid, and requesting medical services; and
- ◆ Establishing location of children in the home. Children should always be observed for evidence of assault or abuse and interviewed for their observations of the incident(s).

B IDENTIFYING THE PRIMARY PHYSICAL AGGRESSOR

When an officer has probable cause to believe that the persons are committing or have committed abuse against each other, the officer **need not arrest both persons**, but **SHOULD ARREST** the person whom the officer believes to be the **primary physical aggressor**.

When determining who is the primary physical aggressor, an officer shall consider the following in accordance with 173-B:10 (II)

- ◆ The intent of RSA 173-B:10 is to protect victims of domestic violence;
- ◆ The relative degree of injury or fear apparent or exhibited by either party; and
- ◆ Any history of domestic abuse between these persons if that history can be reasonably attained.

Other Considerations:

- ◆ The strength and size of each of the persons present;
- ◆ Who originated the emergency call?;
- ◆ Defensive injuries vs. offensive injuries;
- ◆ Criminal records of the parties;
- ◆ Prior police contacts; and
- ◆ Observations and locations of crime scenes.

If the officer decides not to arrest in a domestic violence incident, where such an arrest is lawful, the officer must include in the report of the incident a detailed explanation of the reasons an arrest was not made.

C. ON- SCENE INVESTIGATION

The responding officers should make detailed observations of the scene and those present for later inclusion in their reports. Such observations should include the victim's physical and emotional condition. (See *Domestic Abuse Investigations Checklist*)

- ◆ The responding officers should interview the victim and the assailant as fully as circumstances allow. The officer should be alert to possible incriminating statements by the assailant, and **excited utterances** from the victim or assailant. Every effort should be made to secure a written statement from the victim and witnesses before leaving the scene
- ◆ Whenever possible, the officers should ensure the victim's safety and privacy by interviewing the victim in the area apart from the assailant, witnesses and bystanders. The officer should ask the victim about previous abuse, their frequency and severity. For example, officers should not ask if this is the first such incident, but rather how many times this has happened in the past.

During an interview with a victim, officers are encouraged to make statements similar to the following:

- ◆ Can you tell me what happened?
- ◆ I am afraid for your safety.
- ◆ I am afraid for the safety of your children.
- ◆ I am here to assist you when you are ready to leave.

The officers should ask the victim if there is a protective order in effect (including protective provisions of a bail order) and, if so, if the victim can produce a copy. The officers should note carefully the restrictions imposed by the order so that the officers may determine whether there is probable cause to believe that the order has been violated. **If any of the protective stipulations have been violated the officer MUST arrest the suspect and detain the suspect until arraignment.**

NOTE: A protective order issued by another state, or by a tribal, or territorial court related to domestic or family violence, including an ex-parte order shall be accorded full faith and credit if the issuing court had jurisdiction over the parties and matter under the law of the state, tribe or territory, and the person against whom the order was made was given reasonable notice and opportunity to be heard. (See *Full Faith and Credit* section, page 40)

- ◆ **The officer may rely upon a copy of any protective order provided by any source or may rely on the statement of the person protected by the order that the order remains in effect as written.**
- ◆ If the suspect has been arrested prior to the interview, the suspect must be given Miranda warnings before being questioned. If the suspect is not in custody any admissions made to officers, including the suspect's awareness that a protective order is in effect will be admissible in court. **Officers should note any excited utterances made by the suspect.**
- ◆ If the suspect has fled the scene, the officers should solicit information from the victim and witnesses as to the possible whereabouts of the suspect (place of employment, relatives, friends, etc.)
- ◆ Children should be interviewed as potential victims or witnesses in a manner appropriate to the child's age.
- ◆ Officers should interview any witnesses as fully and as soon as circumstances allow. If witnesses provide information about prior incidents, the officer should document such incidents to establish a pattern.
- ◆ The officers should collect and preserve all physical evidence reasonably necessary to support prosecution, including evidence substantiating the victim's injuries, evidentiary articles that substantiate the attack (weapons, torn clothing etc.).
- ◆ Officers should encourage the victim to seek an emergency room examination and request that the victim sign a medical release form, allowing law enforcement access to the medical records relating to that specific incident. Names of medical personnel who deal with the victim should be collected, as they may be critical witnesses in the prosecution's case. The officer should inquire about injuries of the victim that are concealed by clothing or otherwise not readily apparent.
- ◆ All physical evidence should be collected, noted in reports, and processed as in other criminal investigations. The presence of such evidence may lead to successful prosecution of the accused even if the victim becomes uncooperative or otherwise unavailable by the time of trial.

It is important to document and record all contacts with the defendant. Part of ensuring the victim's safety is to observe the obvious and not so obvious behavior of a defendant. When serving a protective order, answering a call for service and/or doing a criminal investigation, officers are encouraged to document the suspect's:

- ◆ Body language
- ◆ Tone of voice
- ◆ Statements/emotions/mood swings
- ◆ Whether the defendant appears to be under the influence of alcohol or other drugs.

D. PHOTOGRAPHS

The necessity of taking photographs should be determined on a case-by-case basis. When they are being considered, certain aspects need to be addressed.

- ◆ Consider very closely if there is significant visible physical trauma to the victim which photographic representation would clearly and accurately depict.
- ◆ Make a special effort to minimize the potential damaging effect that photography could have on the victim. Do not surprise the victim with the use of a camera. Let the victim know in advance that you are going to take photos by explaining why you are taking them and what purpose they will serve.
- ◆ When criminal prosecution is being considered, a police photographer should take the photographs if available. Photographs taken by medical personnel become part of the medical records and cannot be released to investigators without proper releases. The police officer taking photographs should submit them as evidence consistent with his or her departmental policies on evidence. **DO NOT COMBINE MULTIPLE INVESTIGATIONS ON A SINGLE ROLL OF FILM.** It is best to use a .35mm camera. Polaroid cameras may be used, but currently the quality of the picture will not be as good. Keep in mind, issues may be raised in court as to the authenticity of digital images. Therefore, always try to supplement Polaroid with .35mm photographs as well.
- ◆ The first photo of the roll of film should have a template frame consisting of the following information: Photographer, Date, Time, Location, Incident Case Number and Roll Number. (See Sample Template in Resource section, PAGE 63)
- ◆ Regardless of whether there is an injury to the victim's face or not, an initial photo needs to be taken showing the victim's face for identification purposes. Overall distance photos should be taken to identify the injury in relation to the rest of the body, while close up shots will emphasize the injuries.
- ◆ The injured areas should be photographed with and without enhancements. In order to show the size of the injury and relative location, use a measuring device like a six-inch photographic gray card ruler. It is important to keep the measuring device on the same plane as the injury, or in close proximity in order to depict an accurate representation of the injury.
- ◆ Photograph only visible injuries, bruises, cuts, lacerations, bite marks, etc. and take care to avoid embarrassing the victim. Any non-affected areas should be covered. A re-victimization may occur if photographing is not handled appropriately, and may be almost as traumatic as the abuse itself.

- ◆ The nature of most injuries requires photographing to be timely due to the speed of the normal healing process. Injuries such as bruising will be better demonstrated by using photos taken at time intervals. Photos should be taken the next day or up to 48 hours after the initial assault. A separate roll of film should be used for every set of follow-up photos. All photographs should be marked with the photographer's initials, date, time taken, victim's name and age and the case number.
- ◆ Photographs of the home or crime scene should also be taken at once if indicated. For instance, if it is claimed that the victim has been injured in a fall, the area where the injury is alleged to have occurred should also be photographed. It may be necessary or advisable to obtain a search warrant in order to photograph a scene if written consent to search is not obtained. If the investigating officer is unsure if a search warrant is necessary, the officer should request clarification from the department prosecutor or County Attorney.

DEALING WITH CHILDREN

If children are present during a domestic violence incident, their welfare and safety must be a major consideration.

- ◆ Children also may be witnesses and should be interviewed in a manner appropriate to the child's age.
- ◆ Photograph any visible injuries on the children. (See Photograph section., page 15.)
- ◆ Any evidence of neglect or emotional, physical or sexual abuse of children under age eighteen shall be reported to DCYF and shall be carefully noted and included in the officer's written report.
- ◆ In accordance with RSA 169-C: 6, a police officer may take a child into protective custody without consent of the parents or other person legally responsible for the child's care if the child is in such circumstances or surroundings as would present an imminent danger to the child's health or life unless immediate action is taken and there is not enough time to petition for a court order.

THE ARREST DECISION

RSA 173-B-9 mandates that when a defendant violates either a temporary or permanent protective order issued or enforced under 173-B the officer SHALL ARREST the defendant and ensure that the defendant is detained until arraignment. This includes protective orders contained within a divorce decree issued under RSA 458:16 as part of Divorce Decrees.

RSA 633:3-a mandates that an officer SHALL ARREST a person when the officer has probable cause to believe a violation of the “Stalking” statute has occurred in violation of a protective order contained within a divorce decree issued pursuant to RSA 173-B or 458:16.

An arrest by an officer without a warrant on a charge of a misdemeanor for a violation is lawful whenever:

- ◆ The officer has probable cause to believe that the person to be arrested has within the past 12 hours committed abuse as defined in RSA 173-B: 1, I, against a person eligible for protection from domestic abuse as defined in RSA 173-B: 1.
- ◆ The officer has probable cause to believe that the person to be arrested, has within the last 12 hours, violated a temporary or permanent protective order issued under RSA 173-B or RSA 458:16 by committing assault, criminal trespass, criminal mischief, stalking, violation of a protective order issued pursuant to RSA 173-B: 9, III, or another criminal act.
- ◆ The officer has probable cause to believe that the person to be arrested or has within the last 12 hours violated stalking provisions under RSA 633:3-a.

Upon expiration of the 12-hour time frame or before if possible, the officer should seek a warrant for the suspect’s arrest.

When no protective order is in place, it is the officer’s decision whether an arrest should be made. The officer, therefore, should not rely on the victim’s opposition to arrest and should emphasize to the victim, and to the accused as well, that the criminal action initiated **is the State’s action**, not the victim’s action.

In all cases of domestic abuse in which arrest is not mandated by statute, officers nevertheless **SHOULD ARREST**, with or without a warrant, if probable cause exists to support an arrest. If an officer decides not to arrest in a domestic abuse incident, where such

an arrest is lawful, the officer must include in the report of the incident a detailed explanation of the reasons an arrest was not made.

- ◆ **REMINDER: IF THERE IS A PROTECTIVE ORDER IN PLACE, OFFICERS MUST ARREST IN ALL INSTANCES WHERE THEY HAVE PROBABLE CAUSE TO BELIEVE THAT THE PROTECTIVE ORDER WAS VIOLATED. THE OFFICER MAY RELY UPON A COPY OF ANY PROTECTIVE ORDER PROVIDED BY ANY SOURCE OR MAY RELY ON THE STATEMENT OF THE PERSON PROTECTED BY THE ORDER THAT THE ORDER REMAINS IN EFFECT AS WRITTEN.**

The officer should take the accused into custody as soon as the officer determines that a warrantless arrest is appropriate. If the suspect has fled the scene, the officer should initiate procedures to pursue and apprehend the accused as promptly as possible; arrange for the safety of the family, and take reasonable measures to safeguard the property. If a warrant is necessary, the officer **shall** obtain and execute the warrant as soon as feasible.

Subsequent to an arrest for the violation of the protective order, or abuse, officers **SHALL SEIZE** any firearms and ammunition in the control, ownership, or possession of the defendant and any other deadly weapons in the control, ownership or possession of the defendant which may have been used, or were threatened to be used, during the violation of the protective order. The law enforcement agency shall maintain possession of the firearms, ammunition, or deadly weapons until the court issues a written order directing that the firearms, ammunition, or other deadly weapons be relinquished and specifying the person to whom the firearms and ammunition or other deadly weapons will be relinquished. (See Firearms Section, page 29)

NOTE: Protective orders are civil orders designed to protect the victim from the defendant. The prohibited actions on an order only apply to the person that it is addressed to, and **NOT** to the victim. **It is therefore not possible for the victim to be in violation of the order, and under no circumstances should an officer threaten to or arrest the victim for violating a protective order. Temporary reconciliation shall not revoke the order.** If the victim indicates a desire to initiate contact with the defendant, however, the officer should suggest that the victim contact the issuing court to amend the protective order.

A. PROCEDURE WHEN ARREST IS NOT POSSIBLE

- ◆ If no crime has been committed or there is no probable cause for an arrest, and there are no safety concerns, officers should attempt to mediate the dispute, refer the parties to an appropriate community counseling service, and/or suggest a temporary separation or “cooling-off” period.

- ◆ When arrest is not possible, officers are still obligated to advise the victim of her/his rights under RSA 173-B:10, and should always discuss safety options. This may be done by exploring alternative safe housing or other plans. It is highly recommended that law enforcement encourage victims to call their local crisis centers **(1-866-644-3574)** where housing and safety plans can be formulated and assessed by a trained advocate. If the perpetrator has left the residence, the officer should assess the likelihood of further abuse if the perpetrator returns and if appropriate, discuss the possibility of alternative housing with the victim. If the victim remains in the home, the victim should be encouraged to contact law enforcement again should she fear for her safety or the safety of her children. The victim's perception of the willingness of law enforcement to assist and protect the victim is often the determining factor in the victim's decision to seek further assistance from the criminal justice system.
- ◆ In incidents such as described above, the issuance of a protective order may be appropriate. Officers may assist the alleged victim by directing that person to the court during business hours or by requesting a judge to issue an Emergency Order of Protection by telephone during hours when the court is closed. Officers should be mindful of the statutory protection provided to victims by RSA 173-B: 10
- ◆ (Protection by Police Officers) An abbreviated outline of the statute is provided below.
- ◆ In addition, RSA 173-B: 11 states that all officers shall give victims of abuse immediate and adequate notice of their right to go to the district or superior court in their county to file for a petition asking for a protective order against the abusive person and to seek a private or criminal complaint.

B. PROTECTION BY POLICE OFFICERS

Whenever any police officer has probable cause to believe that a person has been abused, as defined in RSA 173-B:10, officers **SHALL** use all means to prevent future abuse, including, but not limited to:

- ◆ **Confiscating any deadly weapons involved in the alleged domestic abuse AND any firearms, ammunition in the defendant's control, ownership or possession.**
- ◆ Transporting or obtaining transportation for the victim and any child to a designated place to meet with a counselor, family member or friend.
- ◆ Standing by while the victim removes toiletries, medication, clothing, business equipment and other items determined by the court. (See Civil Standby Section, page 38)

- ◆ Giving the victim immediate and written notice of the rights and of the remedies and services available to victims of domestic violence as defined in RSA 173:10 I (d). (See Sample Victim Notification Form, page 8.)

◆

C. EMERGENCY CARE, LIMITATIONS AND LIABILITY 173-B:12

Any act or omission of any peace officer rendering emergency care or assistance to a victim of domestic violence including, **but not limited**, to transportation, **shall not impose** civil liability upon the peace officer or the peace officers supervisors or employer if the care and assistance is rendered in good faith, **unless the act or omission is a result of gross negligence or willful misconduct.**

CHARGING DECISIONS – ISSUES FOR PROSECUTORS

STATUTORY REFERENCES

**RSA 173-B: 9, III
RSA 625:9 (IV and VII)**

A. CHARGING

The decision on whether to file charges and which crimes to charge is solely the responsibility of the prosecutor. In many New Hampshire communities, police prosecutors are responsible for the prosecution of district court cases. Given the increasing complexity of domestic violence cases, law enforcement prosecutors charged with this responsibility should be experienced with domestic violence cases. Prosecutors should understand the issues surrounding domestic violence and be familiar with the available resources in the community.

In deciding to bring a specific charge the officer or prosecutor must determine whether there is sufficient admissible evidence to sustain a guilty finding and a reasonable probability of conviction.

The charging officer should review all the facts in the case and carefully consider the following:

- ◆ The elements of the offense;
- ◆ The extent and seriousness of injuries and/or threats;
- ◆ The use or threatened use of a deadly weapon (including furniture or other household objects);
- ◆ The defendant's criminal history and history of violence toward the victim;
- ◆ The potential lethality of the situation;
- ◆ The defendant's use of alcohol or other drugs insofar as the propensity for violence may be enhanced when repaired;
- ◆ The defendant's current mental status and history of psychiatric illnesses including depression;
- ◆ The victim's cooperation or reluctance.

In domestic violence there are specific statutory provisions that must be taken into account when making the charging decision:

- ◆ If the criminal charges involve a relationship between the parties that fits within the definition under RSA 173-B then the charging officer should check the domestic violence related box on the front of the complaint.
- ◆ Under RSA 173-B:9, III criminal charges resulting from a violation of a protective order shall not be reduced from a class A misdemeanor to a class B misdemeanor, as permitted in other instances under RSA 625:9.
- ◆ New Hampshire State law allows for discretion in selecting class A or class B misdemeanors. However if an A misdemeanor is selected, it may not be reduced to a B misdemeanor in cases where the offense alleged includes a threat of violence or an act of violence. (RSA 625:9, IV and VII.)

In domestic violence cases it is appropriate to charge a class A misdemeanor. Suspended and deferred sentences are useful in allowing for treatment and services beyond just fine collection. Charge reductions make it difficult for law enforcement to provide safety measures in the absence of other court orders. When the victim's safety is a primary concern, charging the defendant with a violation prevents appropriate interventions for the batterer. Charge reductions designed to preclude court appointed counsel are not appropriate.

B. PRIOR CONVICTIONS AND THE IMPACT ON CHARGING

An officer should conduct a search of NCIC prior to the charging decision. Under New Hampshire law, prior domestic violence offenses can be grounds for enhancing the charge for the current offense.

The statute provides the following provisions for enhancing charges:

- ◆ Any person convicted under RSA 173-B:9, III, or who has been convicted in another jurisdiction of violating a protective order enforceable under the laws of this state, and who, within 6 years of such conviction or the completion of the sentence imposed for such conviction, whichever is later, subsequently commits and is convicted of one or more offenses involving abuse may be charged with an enhanced penalty for each such subsequent offense.

The statute provides the following schedule for possible enhancement:

- ◆ There is no enhanced charge under this section if the subsequent offense is a class A felony or an unclassified felony;
- ◆ If the subsequent offense would otherwise constitute a class B felony, it may be charged as an A felony;
- ◆ If the subsequent offense would otherwise constitute a class A misdemeanor, it may be charged as a class B felony;

- ◆ If the subsequent offense would otherwise constitute a class B misdemeanor, it may be charged as a class A misdemeanor; or
- ◆ If the subsequent offense would otherwise constitute a violation, it may be charged as a class B misdemeanor.

NOTE: If the defendant is charged with a class A misdemeanor, has or waives counsel, and had or waived jury trial, and the sentence upon conviction is recorded as a class B misdemeanor (because no jail time was included), the conviction is still a qualifying misdemeanor crime of domestic violence according to the United States Department of Justice and **the defendant is forever prevented from possessing a firearm.**

NOTE: Law enforcement officers and military personnel are not exempt from this statute. Any law enforcement officer or member of the military who has, at any time, been convicted of a qualifying misdemeanor crime of domestic violence may no longer possess a firearm for any purpose, including the performance of official duties.

C. IF NO CHARGES ARE FILED

If the charging officer determines that there are not facts sufficient to file charges then the officer should keep a record of the case and the reasons no charges were filed, and:

- ◆ Explain clearly to the victim why filing of criminal charges is not appropriate;
- ◆ Refer the victim to the local crisis center or other appropriate social service or legal organizations; and
- ◆ Inform the victim of options other than criminal charges, such as domestic violence petitions and protective orders.

D. SENTENCING

STATUTORY REFERENCES

**RSA 173-B:9, III
RSA 651**

Upon a conviction for a domestic violence-related crime:

- ◆ Deferred or suspended sentences, with appropriate conditions, may be effective in promoting deterrence, rehabilitation and treatment. Deferred sentences allow for bail conditions to remain in effect pending imposition of the sentence conditions. (e.g.) 15 days deferred one year pending batterers intervention program attendance and alcohol and other drug counseling.)
- ◆ Incarceration, together with a period of probation, may also be effective, especially when the defendant presents a higher risk of re-offending. (e.g., six

months all but fifteen days deferred pending meaningful participation in a batterers intervention program.)

- ◆ Batterers intervention programs are statutorily permitted and are designed to hold batterers accountable. Personal counseling is also allowed by statute. Joint counseling is strongly discouraged and should not be recommended.

NOTE: Personal counseling is not designed around accountability. Current best practices indicate that batterer's intervention programs are more effective in changing behavior. Negotiated pleas should include appropriate terms and conditions that will hold offenders accountable. In negotiating a plea it is appropriate to consider the federal limitations on weapons possession. Domestic violence cases are not appropriately placed on file because this disposition does not allow for a mechanism for monitoring compliance with any conditions of treatment or contact or good behavior.

- ◆ The victim shall be consulted when crafting a negotiated disposition.

Under Federal Law [USC 922(g)(9)], an order for relinquishment of firearms or other deadly weapons is required when the conviction is for a qualifying misdemeanor crime of domestic violence. A qualifying misdemeanor crime of domestic violence is one, which has, as an element, the use or attempted use of physical force, or the use of a deadly weapon, and is committed by:

- ◆ A current or former spouse, parent or guardian of the victim;
- ◆ A person with whom the victim shares a child in common;
- ◆ One who is or has lived with the victim as a spouse, parent or guardian; or
- ◆ Someone "similarly situated" to a spouse, parent or guardian of the victim.

NOTE: Under federal law, persons convicted of domestic violence-related misdemeanors may be permanently prohibited from possessing a firearm. Under federal law the relationship standard is more limited than under state law. (See Relinquishment section, page 29)

Dismissal or not pressing charges should not be employed as a trial avoidance strategy. Reluctance of a victim should not be the sole factor in deciding to dismiss the case.

BAIL ISSUES

STATUTORY REFERENCES: RSA 173-B:9 (Violation of Protective Order)
RSA 597 (Bail and Recognizance)

INTRODUCTION

NOTE: The officer shall provide to the judge a hard copy of the defendant's criminal record including: New Hampshire criminal record check, New Hampshire license check; motor vehicle history; domestic violence protective order history, if known; Triple Interstate and FBI criminal check. When determining bail in a domestic violence case the officer should make the judge or bail commissioner aware of the relationship of the parties and any facts that help provide for the safety of the victim

A. BAIL WITHOUT AN UNDERLYING PROTECTIVE ORDER

Bail will be determined by the bail commissioner. If an emergency protective order has not been issued, the officer should request restrictions that would ensure the victim's safety.

NOTE: Such restrictions may include any and all protective provisions under RSA 173-B.

B. BAIL WITHOUT AN UNDERLYING PROTECTIVE ORDER WHEN A THREAT HAS BEEN POSED

In cases where there is clear and convincing evidence that the defendant poses a danger to another, the officer should request preventive detention without bail, or impose alternative restrictive conditions, such as electronic monitoring.

The court, justice or bail commissioner may consider, but shall not be limited to consider, any of the following conduct as evidence that the defendant poses a danger:

- ◆ Threats or attempts of suicide.
- ◆ Depression or sudden lifting of moods.
- ◆ History of violating protective orders.
- ◆ Recent acquisition or change in use of weapons.
- ◆ Homicidal ideation, threats or attempts.
- ◆ Threats of imprisonment of the victim, or possessiveness toward another.

- ◆ Interference with help seeking attempts on the part of the victim. (e.g., pulling a phone jack out of the wall.
- ◆ Stalking as defined in RSA 633:3.
- ◆ Cruelty to or violence directed towards pets.
- ◆ Escalation of physical violence.
- ◆ Escalation of other forms of abuse.
- ◆ Sexual abuse of the victim.
- ◆ Recent acquisition or change in use of weapons.
- ◆ Change in alcohol or other drug use/abuse.
- ◆ Mental health concerns connected with violent behavior.
- ◆ Other criminal behavior or injunctions (e.g., resisting arrest)
- ◆ Increase in personal risk taking (e.g., violation of a protective order)
- ◆ Victim's attempt to flee the perpetrator or to terminate the relationship.
- ◆ Perpetrator's access to the victim or her/his family.

NOTE: The first seven examples are listed in the statute. The others are taken from the *New Hampshire Batterer's Intervention Standards 2002*. No one factor alone suggests that severe violence/lethality will happen. Generally speaking, however, the more indicators present, the higher the risk of serious violence. Also, as can be noted by the phrasing of some of the above items, a **change** in factors is more important than the mere **presence** of those factors (e.g., owning a weapon is not as relevant as recently purchasing that weapon). Increased monitoring with the perpetrator may also be indicated. While research has shown that each of these factors may be a strong indicator of lethality or future violence, a high lethality risk may exist even in the absence of these factors.

C. BAIL WITH A PROTECTIVE ORDER IN PLACE

When law enforcement is aware of an existing domestic violence protective order, the officer should ask the judge or bail commissioner for conditions of bail that duplicate the conditions in the civil protective order and not simply reference them. The officer should be aware that the bail conditions apply even in the event the victim withdraws the protective order.

D. VICTIM NOTIFICATION OF BAIL ORDERS

When making bail orders in domestic violence cases, courts should address the issue of victim notification with the prosecutor at the arraignment in order to guarantee that proper notification is made.

NOTE: It is important that victims of domestic violence be made aware of all outstanding orders for protection, including bail orders. Since the court system is often not aware of the victim's location, the prosecuting agency is the most likely contact point.

FIREARMS ISSUES

STATUTORY REFERENCES

RSA 159:3	(Convicted Felons)
RSA 159:11	(False Information)
RSA 159-C:2	(Sale of Handguns: Criminal Record Check)
RSA 159-D: 3	(Penalty for Attempts to Purchase Firearms Illegally)
RSA 173-B:4	(Temporary Relief)
RSA 173-B:5	(Relief)
RSA 173-B:9	(Violation of Protective Orders)
RSA 173-B:11	(Notice to Victims)
RSA 625:11, V	(Deadly Weapons)
RSA 629:1	(Attempt)

A. AS DEFINED IN THE DEFINITION SECTION (PAGE 4)

Firearms

"Firearm" is defined in RSA 173-B:1, XI as "any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by force of gunpowder". Note that New Hampshire has no further definition of firearm.

Deadly Weapons

"Deadly weapons" are defined as any "knife or other substance or thing which, in the manner it is used, intended to be used, or threatened to be used, is known to be capable of producing death or serious bodily injury" (See RSA 625:11, V).

B. RELINQUISHMENT

Under state law, a court has the discretion to order a defendant to relinquish firearms and other deadly weapons as part of a telephonic or temporary order. **Relinquishment is mandatory at the time of a final order, and upon arrest for a violation of a civil protection order.**

Under federal law { 18 USC sec. 922 (g)(8)}, it is also a crime to possess a firearm or ammunition while subject to a valid protection order which restrains the defendant from

harassing, stalking or threatening an intimate partner or child of an intimate partner. The order **must** have been issued after a hearing at which the defendant had actual notice and an opportunity to participate. The order also **must** include a finding that the defendant represents a credible threat to the physical safety of the victim or must explicitly prohibit the use, attempted use or threatened use of physical force against the victim.

Restrictions to possession of a firearm under federal law:

1. Under the Federal Crime Control Law Enforcement Act of 1994, 1 USC 922 (g)(8) it is unlawful for an individual subject to a “permanent” protective order involving an “intimate partner” to receive, ship, transport or possess guns including handguns, rifles and shotguns.

NOTE: Firearms prohibitions under this section, except as noted in #2 below, do not apply to the official use of firearms by law enforcement or military personnel. While subject to a protective order, an officer can only use a service weapon while on duty or may possess a service weapon if official duties require the possession of that weapon. The possession of personal firearms would still be prohibited under this section.

2. Under 18 USC 922 (g)(9) it is unlawful for any person convicted of certain misdemeanor crimes involving domestic violence to ship, transport, possess, sell or otherwise dispose of weapons and firearms

The federal gun restrictions apply where a victim is either a current or former spouse, person who has a child with the defendant, or person who has cohabited with the defendant.

NOTE: There is no exception for law enforcement or military personnel under this section if the conviction is for a qualifying misdemeanor.

3. Under 18 USC 922 (g)(1) “Felon in Possession of a Firearm” it is unlawful for any person who has been convicted in any court of a crime punishable by more than a year, to ship, transport or possess firearms.

a. Emergency Telephonic Orders

Relinquishment of firearms, ammunition and other deadly weapons is discretionary with the court at the time of a telephonic emergency protection order issued during non-business hours. The law enforcement officer's input on the risks posed by the defendant should be considered. (RSA 173-B:4)

b. Temporary Orders

Relinquishment of firearms, ammunition and other deadly weapons at the time of a temporary hearing is discretionary. In deciding whether to order relinquishment, the court should give due consideration to the safety needs of the victim and children. If the law enforcement officer is present, his/her input on the risks posed by a defendant also should be considered.

Relinquishment, if ordered, **shall** be to a police officer. The defendant may be ordered to surrender any and all firearms and ammunition in the defendant's control, ownership or possession. The court may also order any other person holding a firearm or ammunition on behalf of the defendant to relinquish them to any peace officer.

The court also may order the defendant to relinquish any other deadly weapons which were identified in the petition for a protective order, which are in the possession of the defendant or any other person on behalf of the defendant if any were specified in the petition. (RSA 173-B:4, I(a)(9))

The court also may prohibit the defendant from purchasing, receiving or possessing any deadly weapons, including any firearms and ammunition for the duration of the order. (RSA 173-B:4, II)

NOTE: RSA 159-D:3 makes the application for purchase of a firearm illegal if the person is subject to a protective order.

If a police officer demonstrates probable cause to believe that a defendant has not relinquished firearms, ammunition or other deadly weapons referenced in the protection order, the court may issue a search warrant authorizing the peace officer to seize any deadly weapons specified in the protection order including any and all firearms and ammunition.

c. Violations

Subsequent to an arrest for violation of any protection order (whether telephonic, temporary, final or foreign), a police officer **shall seize** any firearms and ammunition in the control, ownership or possession of the defendant and any other deadly weapons, which have been used or were threatened to be used, during the violation of the protective order. (RSA 173-B:9(b)) This rule of mandatory seizure does not authorize a police officer to enter the person's home for the purpose of seizing the weapons. A search warrant must be obtained unless the officer is given consent to enter.

Any person who, in purchasing or otherwise securing delivery of a pistol, revolver, or other firearm, gives false information or offers false evidence of his identity, shall be guilty of a misdemeanor for the first offense, and be guilty of a class B felony for any subsequent offense.

The law enforcement agency shall maintain possession of the firearms, ammunition and deadly weapons until the court issues an order directing that they be relinquished and specifying the person to whom they will be relinquished

d. Final Orders

At the time of issuance of any final protection order, the court **must** include an order directing the defendant to relinquish to a police officer any and all firearms and ammunition in the control, ownership or possession of the defendant, or any other person on behalf of the defendant, for the duration of the protection order. (RSA 173-B:5, I)

The defendant **shall** also be ordered to relinquish to a police officer any and all other deadly weapons specified in the protection order that are in the control, ownership or possession of the defendant, or any other person on behalf of the defendant. (RSA 173-B:5, I(a)(6))

The defendant **shall** be prohibited from purchasing, receiving or possessing any deadly weapons including any and all firearms and ammunition for the duration of the order. (RSA 173-B:5, II);

As may occur pursuant to a temporary order, if a police officer demonstrates probable cause to believe that firearms and ammunition and other specified deadly weapons have not been relinquished and are kept on the premises or curtilage of the defendant, the court may issue a search warrant authorizing the police officer to seize such weapons, including firearms and ammunition. (RSA 173-B:5, II)

e. Inventory

Firearms seized pursuant to a domestic violence incident shall be documented and inventoried consistent with departmental policy.

C. STORAGE

Although the statute calls for a relinquishment of firearms to a police officer, a defendant may make alternative arrangements with a federally licensed firearms dealer for the storage of firearms, at the defendant's expense. (RSA 173-B:5, X(c)) Any such alternative arrangements **must** be approved by the court in advance. The defendant **must** relinquish the guns to the appropriate law enforcement agency, which will, in turn, transfer them to the storage facility. The defendant is not permitted to turn the firearms over to the storage facility directly. Note that the statute permits alternative arrangements for storage of firearms and ammunition, but is silent on the issue of alternative storage for other deadly weapons.

Any request for alternative arrangements **must** be presented to the court in the form of an oral or written motion. All parties shall be given the opportunity to be heard.

Firearms and ammunition may be transferred only to a federally licensed firearm dealer. If so approved by the court, the firearms **shall** be transferred directly from the appropriate law enforcement agency to the federally licensed firearm dealer. (RSA 173-B:5, I)

NOTE: Friends, relatives or other third parties **are not permitted** to store firearms and ammunition during the term of the protection order.

Law enforcement agencies or other approved storage facilities are permitted to charge a fee for storage of firearms, ammunition and other specified deadly weapons. The fee charged by a law enforcement agency may not exceed the actual cost of storage. Law enforcement agencies shall not be held liable for alleged damage or deterioration due to storage or transportation, so long as due care is used.

No law enforcement agency or federally licensed firearms dealer may release any firearm, ammunition or other deadly weapons without a court order. (RSA 173-B:5, X (c)) A defendant is not permitted to retrieve guns being held in storage by a licensed firearm dealer directly through the dealer. Retrieval of the guns shall be through the law enforcement agency that turned the guns over to the storage facility and that agency will, in turn, release the firearms, ammunition or other deadly weapons upon court order.

D. RETURN OF FIREARMS AND AMMUNITION

Firearms seized in a criminal domestic violence case where no civil order exists, the prosecutor should seek a court order for relinquishment of those firearms.

Firearms seized or held pursuant to a domestic violence protective order shall be relinquished only upon a court order.

NOTE: For further information regarding enforcement of New Hampshire laws on firearms, ammunition and other deadly weapons possession, sale, purchase or transfer, see *State of New Hampshire: Law Enforcement Memorandum on New Hampshire Laws Outlawing the Purchase or Attempted Purchase of Weapons by Prohibited Persons*, issued by the Attorney General on October 30, 2000.

REPORTING

At the conclusion of any domestic violence call where there is probable cause to believe that a crime has been committed, the officer shall file a narrative report detailing his or her observations, the parties involved and any actions taken.

As in any other criminal case, if an arrest was made, all evidence and relevant information should be documented, including statements for all involved parties and witnesses, to assist the prosecutor. The box on the complaint form indicating that this criminal offense occurred in a domestic setting should also be checked.

If no arrest was made, the officer must document the compelling reasons why the officer did not make the arrest.

PROTECTIVE ORDERS

A. EMERGENCY TELEPHONIC ORDERS

District and superior court judges may issue temporary orders of protections in domestic violence cases when the court is not open for business. (RSA 173-B: 4.) **This process should not be used as a substitute for arresting an offender** in a domestic violence situation and establishing a “no contact with the victim” provision as a condition of bail.

PROCEDURE FOR OFFICER OBTAINING AN EMERGENCY PROTECTIVE ORDER:

Complete and sign the allegation of abuse section of the Emergency Order of Protection and Affidavit of Service Form. Detail specific dates, times and events;

NOTE: Officers shall not make the determination whether or not a petitioner is eligible for an emergency protective order. This is solely a judicial decision.

Contact the judge of the district court having jurisdiction. If contact is not made, call an associate or special justice. If no contact can be made, refer to the list of judges for your jurisdiction and call the judge nearest to your location.

- ◆ Identify yourself to the judge and read the victim’s allegation of abuse. The victim should, if possible, be in the same room to answer any inquiries the court may have;
- ◆ If the judge makes a finding of domestic violence, check the appropriate box on the order and proceed to read to the judge each available order. Check all orders the judge indicates;
- ◆ At the conclusion of the conversation with the judge, sign the order where indicated;
- ◆ Provide the victim with a copy of the order. Explain that the defendant will also receive a copy of the allegations contained in the order;
- ◆ **Explain to the victim that the order remains in effect only until the close of the next court business day. Inform the victim that he/she must apply for a new petition by the close of the next court business day if he/she wishes the order to continue.**
- ◆ Provide the victim with information regarding the local crisis center and the location of the appropriate court;
- ◆ Follow all departmental procedures for service of the defendant’s copy upon the defendant;

- ◆ Fax the emergency protective order to the Department of Safety and the court of jurisdiction. The Department of Safety shall make available information regarding protective orders issued telephonically to police and sheriff departments statewide;
- ◆ File the return of service at the opening of the next business day at the court of jurisdiction of the residence of the victim.

B. TEMPORARY PROTECTIVE ORDERS

Temporary Restraining Orders may be obtained at all New Hampshire district, superior and family courts during court business hours. A final hearing on the order is to be held within 30 days of the filing of the petition or within 10 days of service of process of the defendant, whichever occurs first.

The defendant may request an expedited hearing. If so, such a hearing shall be held no less than three (3) nor more than five (5) business days after a written request is received.

C. FINAL ORDERS

At the final hearing the victim must establish by a preponderance of evidence that the defendant abused the victim within the meaning of RSA 173-b: 1, and that the defendant poses “a credible threat to the victim’s safety.” If the final order is granted it will be made effective for one year.

D. SERVICE OF ORDERS

Emergency and temporary protective orders **SHALL BE PROMPTLY SERVED** on the defendant. In most cases the responsibility for service of protective orders will fall upon the local police department where the defendant resides. Service of these orders can include the potential for violence, therefore, information about the alleged batterer is critical for the safe service of the order.

Temporary Restraining Order (TRO) Service Information is available to all district and superior courts and police agencies to facilitate the gathering of pertinent information about the alleged batterer. This information will allow the officer to better assess the potential for violence at the time of service.

All attempts to serve shall be recorded in a journal report initiated for said order. Officers should include any information obtained in the attempt to serve, including updated defendant information. A copy of the journal will be attached to the order after each attempted service. If the officer is unable to make service, the report should indicate why (i.e. defendant has moved; no response at door, etc) All returns of service including service of emergency orders must be sent to the court.

Once served, the Administrative Office of the Courts shall enter information regarding the protective orders into the state database which shall be made available to police and Sheriff departments statewide. The department of safety shall make available information regarding protective orders issued telephonically to police and sheriff departments statewide.

Prior to serving the order:

- ◆ Review the Temporary Restraining Order Information Form to assess for potential risk during service.
- ◆ Review provisions of the protective order checked or written by the judge.

NOTE: The officer should review the gun removal and other relief provisions contained in the order. Weapons and ammunition **shall not** be removed unless specifically ordered by the judge in the order.

When serving the order:

- ◆ Verify the defendant's date of birth and social security number.
- ◆ Thoroughly explain the order's content and its penalties to the defendant;
- ◆ Confirm that the defendant understands the order;
- ◆ Insure that the defendant is aware of the hearing date listed at the bottom of the order;
- ◆ Notify the defendant that a hearing to be held within 5 business days can be requested in writing at the court where the order was issued;
- ◆ Observe and document the defendant's response to service including statements made, body language, sobriety, etc.;
- ◆ **Ensure that the victim's address or the location of any domestic violence shelter is not divulged to the defendant; and**
- ◆ Deliver return of service form to the court of issuance.

E. ENFORCEMENT OF ORDERS

Emergency, temporary, final, and foreign orders are enforceable statewide as are the protective provisions of divorce decrees. **The violation of a protective order is a misdemeanor for which arrest and detention is statutorily mandated by RSA 173-B:9.**

If an officer is confronted with conflicting protective orders, the officer should contact a judge who signed the most recent order, for clarification.

F. CIVIL STANDBYS

Civil standbys for the purpose of retrieving personal property by both the defendant and the victim are required and outlined by statute.

NOTE: Remember that the provisions of the protective order remain in effect while the civil standby is taking place.

Defendant- RSA 173-B:5 I.(a)(2) – restrains the defendant from entering the premises and curtilage where the defendant resides, except when the defendant is “accompanied by a peace officer and is allowed entry by the victim for the sole purpose of retrieving personal property specified by the court”.

The defendant must make arrangements through the local law enforcement agency to retrieve any property specified by the court. The law enforcement agency should contact the victim and arrange for a convenient time for the defendant and law enforcement officer to proceed to the residence to retrieve the items designated. Should the victim deny access to the items specified by the court, the law enforcement officer should notify the court of the refusal. Disputed property needs to be addressed by the court and should be left at the residence until so ordered. **UNDER NO CIRCUMSTANCES SHOULD THE DEFENDANT BE ALLOWED ACCESS TO THE RESIDENCE WITHOUT THE SPECIFIC CONSENT OF THE VICTIM AND THE PHYSICAL PRESENCE OF AN OFFICER.**

For the personal safety of the officer and the victim, the officer should physically remain in the presence of the defendant while he/she is retrieving the items specified by the court.

Victim – RSA 173-B:10 I. (d) – requires a law enforcement officer to “assist the victim in removing toiletries, medication, clothing, business equipment and any other items determined by the court”.

If the victim has left the residence, this statute does not require notification or permission from the defendant to remove the items specified. Nor does it require that the defendant be present. Upon arrival at the residence with the victim, the law enforcement officer should remain in the presence of the victim while he/she removes the specified property. If the defendant is present, it is recommended that two officers be present and that one officer stay with the victim and the other with the defendant. If it is not possible to have two officers present, the officer should request the defendant to remain in a specific location e.g. sit on the couch) and the officer should have visual contact with the defendant at all times.

If there is a court order allowing a large amount of personal property, such as furniture, to be removed from the residence and it is apparent that it will take several hours, it

is recommended that the law enforcement agency seek guidance from the court relative to cost reimbursement or any other alternative plan the court may recommend or dictate.

FULL FAITH AND CREDIT

STATUTORY REFERENCES: **RSA 173-B:13 (Orders Enforceable)**
 RSA 458:16, I,II,III (Temporary Orders)

"Full Faith and Credit" refers to Section 2265 of the Violence Against Women Act (18 U.S.C. Section 2265). This section provides that any valid protection order issued in one state is to be treated by another state as if it were one of its own, and enforced in the same manner as an order issued in-state.

Since 1994, the Violence Against Women Act has required every jurisdiction in the United States to recognize and enforce valid protection orders. The jurisdictions include all states and political subdivisions, tribal governments, the District of Columbia, and commonwealths, territories and possessions (e.g., Puerto Rico, Guam). New Hampshire adopted its Full Faith and Credit section in 1993. Provisions for notice under 173-B meet the Federal requirements for the relinquishment of firearms.

The laws of the **issuing jurisdiction** govern the persons who are eligible for a protection order, the length of time the order will be in effect and the relief that may be granted. The **enforcing jurisdiction** determines only how a violation will be enforced. For example, if another state court issued a three-year order, it would have to be enforced in New Hampshire for the full three years, even though New Hampshire would issue only one-year orders.

Additionally, the enforcing state applies its own laws and procedures only for enforcement of protection orders. In New Hampshire, for example, we have "mandatory arrest" for violation of a protective order. If a defendant violates an out of state protection order in New Hampshire, we would apply the mandatory arrest standard. If a defendant violated a New Hampshire Protective order in another state, that state's arrest policy would apply.

A. ENFORCEMENT OF FOREIGN PROTECTION ORDERS

A foreign protective order must be enforced as written. For an order issued in another jurisdiction to be entitled to enforcement in New Hampshire the order must be a "valid protection order", which means that:

- ◆ The issuing court had jurisdiction over the parties and subject matter;
- ◆ The defendant was given notice and an opportunity to participate at a hearing;
- ◆ If it is an ex parte order, the defendant must be given notice and the opportunity for a hearing within a reasonable time frame;
- ◆ The order must have been issued in response to a specific petition or motion for protection; and

- ◆ The order must have been issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, a protected person.

A victim may chose to register an order from another jurisdiction in New Hampshire. If so, the victim registers the order with the local court. However, a foreign protection order does not need to be registered in order to be enforced in New Hampshire.

A mutual protection order issued by a foreign jurisdiction against a person who has received a protection order shall be accorded full faith and credit only if:

- ◆ A cross or counter petition, complaint, or other written pleading was filed seeking such protection order; and
- ◆ The court made specific findings of domestic or family violence by both parties and that each party was entitled to such order.

New Hampshire's emergency telephonic orders issued during non-court business hours are not entitled to full faith and credit because there is no statutory provision for a hearing for the defendant, since such orders expire at the close of the next business day. These orders are enforceable throughout New Hampshire, but not outside the state.

COURT SECURITY

A police officer, upon receiving a complaint of threatening behavior or a violation of a protective order at the court, should take appropriate action, for example, notifying court security, the prosecutor, the victim witness advocate and the clerk of court.

As domestic violence situations are volatile, the criminal justice community must take the threats seriously. Police officers should report such incidents to their supervisors. Officers should follow Departmental Procedures on emergency notifications.

Officers should be aware that Security Officers have arrest authority on court property only. In Superior Court, the Bailiffs are sworn as Deputy Sheriffs and have all the powers of that position. However, individual responsibility may be principally within the court itself.

Officers who are made aware of a threat may deem that it is in the victim's best interest to provide an escort to victims traveling to and from the court hearings. Obviously, the actions taken should be based upon the officer's assessment of the threat potential. Officers should keep in mind that the stalking statute may apply in such cases.

Finally, the officer should coordinate his or her efforts with the Court. All Courts have policies and procedures in place to ensure the safety of the victim.

RESOURCE LIST

I.	LAW ENFORCEMENT DOMESTIC VIOLENCE PROTOCOL COMMITTEE LIST	45
II.	NEW HAMPSHIRE DOMESTIC AND SEXUAL VIOLENCE CRISIS CENTERS	47
III.	COUNTY ATTORNEY'S OFFICES	49
IV.	VICTIM/WITNESS ASSISTANCE PROGRAMS	51
V.	NEW HAMPSHIRE DISTRICT AND FAMILY DIVISION COURTS	53
VI.	NEW HAMPSHIRE SUPERIOR COURTS	55
VII.	REPORTING CHILD ABUSE AND NEGLECT	57
VIII.	DIVISION FOR CHILDREN, YOUTH AND FAMILIES DOMESTIC VIOLENCE GUIDELINES.....	59
IX.	GROUND FOR DENIAL OF RETURN OF FIREARMS AND DEADLY WEAPONS.....	61
X.	PHOTOGRAPH TEMPLATE.....	63

RESOURCE I

DOMESTIC VIOLENCE LAW ENFORCEMENT PROTOCOL COMMITTEE

Chair : Sandra Matheson – Director
State Office of Victim/Witness Assistance
Attorney General's Office

Honorable Susan Carbon
Plymouth Family Division
Concord District Court

Grace Mattern, Executive Director
NH Coalition Against Domestic and
Sexual Violence

Meg Dugan, Director
AmeriCorps Victim Assistance Program

Mary Mayhew, Director
Starting Point

Linda Griebisch, Public Policy Director
NH Coalition Against Domestic and
Sexual Violence

Elizabeth Paine, J.D.

Lynda Ruel, Victim/Witness Advocate
University of NH Police Department

Chief Nicholas Halias
University of NH Police Department

Chief Timothy Russell
Henniker Police Department

Scott Hampton, PsyD
Ending the Violence

Nicole Tower, Director
YWCA Crisis Services

TFC Kathy Kimball
New Hampshire State Police

Major Keith Lohmann
Police Standards and Training

RESOURCE II

NEW HAMPSHIRE SEXUAL ASSAULT CRISIS CENTERS

NEW HAMPSHIRE SEXUAL ASSAULT HOT LINE: 1-800-277-5570

These centers provide the following free, confidential services to victims of sexual assaults:

- * 24 Hour Crisis Line
- * Court Advocacy
- * Emotional Support

- * Medical and Legal Options and Referrals
- * Peer Counseling and Support Groups

RESPONSE to Sexual & Domestic
Violence
C/o Coos County Family Health Service
54 Willow Street
Berlin, NH 03570
1-800-852-3388 (crisis line)
752-5679 (Berlin Office)
237-8746 (Colebrook Office)
788-2562 (Lancaster Office)

Women's Supportive Services
11 School Street
Claremont, NH 03743
1-800-639-3130 (crisis line)
543-0155 (Claremont Office)
863-4053 (Newport Office)

Rape and Domestic Violence
Crisis Center
PO Box 1344
Concord, NH 03302-1344
1-800-852-3388 (crisis line)
225-7376 (Office)

Starting Point Services for Victims
of Domestic and Sexual Violence
PO Box 1972
Conway, NH 03818
1-800-336-3795 (crisis line)
356-7993 (Conway Office)
539-5506 (Ossipee Office)

Women's Crisis Service of the
Monadnock Region
12 Court Street
Keene, NH 03431-3402
352-3782 (crisis line)
352-344 (Keene Office)
532-6800 (Jaffrey Office)

New Beginnings
A Women's Crisis Center
PO Box 622
Laconia, NH 03246
1-800-852-3388 (crisis line)
528-6511 (Office)

Women's Information Serv. (WISE)
79 Hanover Street, Suite 1
Lebanon, NH 03766
448-5525 (crisis line)
448-5922 (Office)

The Support Center at Burch House
PO Box 965
Littleton, NH 03561
1-800-774-0544 (crisis line)
444-0624 (Littleton Office)
747-2441 (Woodsville Office)

YWCA Crisis Service
72 Concord Street
Manchester, NH 03101
668-2299 (crisis line)
625-5785 (Manchester Office)
432-2687 (Derry Office)

Bridges
PO Box 217
Nashua, NH 03061-0217
883-3044 (crisis line)
889-0858 (Nashua Office)
672-9833 (Milford Office)

Voices Against Violence
PO Box 53
Plymouth, NH 03264
536-1659 (crisis line)
536-3423 (Office)

Sexual Harassment and Rape
Prevention Program
(SHARPP)
UNH, 202 Huddleston Hall
Durham, NH 03824
862-3494 (crisis line & Office)

A Safe Place
PO Box 674
Portsmouth, NH 0302
1-800-852-33 (crisis line)
436-7924 (Portsmouth Office)
330-0214 (Rochester Office)
890-6392 (Salem Office)

Sexual Assault Support Services
7 Junkins Avenue
Portsmouth, NH 03801
1-888-747-7070 (crisis-toll free)
436-4107 (Portsmouth Office)

RESOURCE III

NEW HAMPSHIRE COUNTY ATTORNEY OFFICES

Belknap County Attorney
64 Court Street
Laconia, NH 03246
(603) 527-5440

Carroll County Attorney
P.O. Box 218
Ossipee, NH 03864
(603) 539-7769

Cheshire County Attorney
12 Court Street
Keene, NH 03431
(603) 352-0056

Coos County Attorney
55 School Street, Suite 102
Lancaster, NH 03584
(603) 788-3812

Grafton County Attorney
3785 Dartmouth College Highway
No. Haverhill, NH 03774
(603) 77-6968

Hillsborough County Attorney-Northern
District
300 Chestnut Street
Manchester, NH 03101
(603) 627-5605

Hillsborough County Attorney-Southern
District
19 Temple Street
Nashua, NH 03060
(603) 594-3250

Merrimack County Attorney
4 Court Street
Concord, NH 03301
(603) 228-0529

Rockingham County Attorney
P.O. Box 1209
Kingston, NH 03848
(603) 642-4249

Strafford County Attorney
P.O. Box 799
Dover, NH 03821-0799
749-4215

Sullivan County Attorney
14 Main Street
Newport, NH 03773
(603) 863-8345

RESOURCE IV
NEW HAMPSHIRE
VICTIM/WITNESS ASSISTANCE PROGRAMS

Office of Victim/Witness Assistance
Attorney General's Office
33 Capitol Street
Concord, NH 03301
(603) 271-3671

Belknap County Victim/Witness Program
Belknap County Superior Courthouse
64 Court Street
Laconia, NH 03246
(603) 524-8050

Carroll County Victim/Witness Program
P.O. Box 218
Ossipee, NH 03864
(603) 539-7769

Cheshire County Victim/Witness Program
12 Court Street
Keene, NH 03431
(603) 352-0056

Coos County Victim/Witness Program
55 School Street, Suite 102
Lancaster, NH 03584
(603) 788-3812

Grafton County Victim/Witness Program
3801 Dartmouth College Highway
No. Haverhill, NH 03774
(603) 787-2193

Hillsborough County Victim/Witness Program
- Northern District
300 Chestnut Street
Manchester, NH 03101
(603) 627-5605

Hillsborough County Victim/Witness Program
-Southern District
19 Temple Street
Nashua, NH 03060
(603) 594-3256

Merrimack County Victim/Witness Program
4 Court Street
Concord, NH 03301
(603) 228-0529

Rockingham County Victim/Witness Program
P.O. Box 1209
Kingston, NH 03848
(603) 642-4249

Strafford County Victim/Witness Program
P.O. Box 799
Dover, NH 03821-0799
(603) 749-4215

Sullivan County Victim/Witness Program
14 Main Street
Newport, NH 03773
(603) 863-8345

Victim's Compensation Commission
NH Attorney General's Office
33 Capitol Street
Concord, NH 03301
(603) 271-1284
1-800-300-4500

Victim Services
Department of Corrections
PO Box 1806
Concord, NH 03302-1806
(603) 271-1937

United States Attorney's Office
District of New Hampshire
James C. Cleveland Federal Bldg.
55 Pleasant St., Suite 312
Concord, NH 03301
(603) 225-1552

RESOURCE V

NEW HAMPSHIRE DISTRICT AND FAMILY DIVISION COURTS

Auburn District Court
5 Priscilla Lane
Auburn, NH 03032
(603) 624-2084/2265

Berlin District Court
220 Main Street
Berlin, NH 03570
(603) 752-3160

Claremont District Court
Tremont Square
PO Box 313
Claremont, NH 03743
(603) 542-6064

Concord District Court
32 Clinton Street
PO Box 3420
Concord, NH 03302
(603) 271-6400

Derry District Court
10 Manning Street
Derry, NH 03038
(603) 433-4676/4677

Dover District Court
25 St. Thomas Street
Dover, NH 03820
(603) 742-7202/749-4612

Durham District Court
Main St.
Durham, NH 03824
(603) 868-2323

Exeter District Court
120 Water St.
PO Box 394
Exeter, NH 03833
(603) 772-2931

Franklin District Court
7 Hancock Terrace
PO Box 172
Franklin, NH 03235
(603) 934-3290

Goffstown District Court
16 Main St.
PO Box 129
Goffstown, NH 03045
(603) 497-2597

Gorham District Court
PO Box 176
Gorham, NH 03581
(603) 466-2454

Hampton District Court
132 Winnacunnet Rd.
PO Box 10
Hampton, NH 03843
(603) 926-8117

Haverhill District Court
Court St.
Woodsville, NH 03785
(603) 747-3063

Henniker District Court
2 Depot St.
Henniker, NH 03242
(603) 42-3214

Hillsboro District Court
27 School St.
PO Box 763
Hillsboro, NH 03244
(603) 464-5811

Hooksett District Court
101 Merrimack St.
Hooksett, NH 03106
(603) 485-9901/9220

Jaffrey/Peterborough District Court
7 Knight St.
PO Box 39
Jaffrey, NH 03452
(603) 532-8698/7276

Keene District Court
3 Washington St.
PO Box 364
(603) 352-2559/2047

Laconia District Court
Academy Square
PO Box 1010
Laconia, NH 03247
(603) 524-4128/4051

Lancaster District Court
55 School St., Suite 201
Lancaster, NH 03584
(603) 788-4485

Lebanon District Court
38 Centerra Pkwy.
Lebanon, NH 03766
(603) 643-3555

Littleton District Court
134 Main St.
Littleton, NH 03561
(603) 444-7750

Manchester District Court
PO Box 456
35 Amherst St.
Manchester, NH 03105
(603) 624-6510

Merrimack District Court
Baboosic Lake Road
PO Box 324
Merrimack, NH 03054
(603) 424-9916/9917/7005

Milford District Court
Meeting Place Mall
PO Box 148
Amherst, NH 03031
(603) 673-2900

Nashua District Court
25 Walnut St.
Nashua, NH 03060
(603) 880-3333/3336

New London District Court
Main St.
PO Box 1966
New London, NH 03257
(603) 526-6519

Newport District Court
Main St.
PO Box 581
Newport, NH 03773
(603) 863-1832

Northern Carroll County District Court
E. Conway Rd., Route 302
PO Box 940
Conway, NH 03818
(603) 356-7710

Plaistow District Court
145 Main St.
PO Box 129
Plaistow, NH 03865
(603) 382-4651

Plymouth District Court
26 Green St.
Plymouth, NH 03264
(603) 536-3326

Portsmouth District Court
111 Parrott Ave.
Portsmouth, NH 03801
(603) 431-2192

Rochester District Court
76 N. Main St.
Rochester, NH 03867
(603) 332-3516/3150

Salem District Court
35 Geremonty Dr.
Salem, NH 03079
(603) 893-4483

Somersworth District Court
2 Pleasant St.
Somersworth, NH 0378
(603) 692-5967

Southern Carroll County District Court
Route 171, Courthouse Square
PO Box 421
Ossipee, NH 03864
(603) 539-4561

RESOURCE VI

NEW HAMPSHIRE SUPERIOR COURTS

Belknap County Superior Court
64 Court Street
Laconia, NH 03246
(603) 524-3570

Carroll County Superior Court
PO Box 157
Ossipee, NH 03864
(603) 539-2201

Cheshire County Superior Court
12 Court Street
Keene, NH 03431
(603) 352-6902

Coos County Superior Court
55 School St., Suite 301
Lancaster, NH 03584
(603) 788-4900

Grafton County Superior Court
3785 Dartmouth College Hwy.
North Haverhill, NH 03774
(603) 787-6961

Hillsborough County Superior Court
Northern District
300 Chestnut St.
Manchester, NH 03101
(603) 669-7410

Hillsborough County Superior Court
Southern District
30 Spring St.
PO Box 2072
Nashua, NH 03061
(603) 883-6461

Merrimack County Superior Court
4 Court St.
Concord, NH 03301
(603) 225-5501

Rockingham County Superior Court
PO Box 1258
Kingston, NH 0348-1258
(603) 642-5256

Strafford County Superior Court
PO Box 799
Dover, NH 03821-0799
(603) 742-3065

Sullivan County Superior Court
22 Main St.
Newport, NH 03773
(603) 863-3450

RESOURCE VII

CHILD ABUSE AND NEGLECT MANDATORY REPORTING LAW

1. Reporting is Mandatory

New Hampshire Law (RSA 169-C:29-30) requires that any person who has reason to suspect that a child under the age of 18 has been abused or neglected must report the case to: **New Hampshire Division of Children, Youth and Families - Central Intake 1-800-894-5533.**

2. An Abused Child is one who has:

- a. Been sexually molested; or
- b. Been sexually exploited; or
- c. Been intentionally physically injured; or
- d. Been psychologically injured so that said child exhibits symptoms of emotional problems generally recognized to result from consistent mistreatment or neglect; or
- e. Been physically injured by other than accidental means.

3. A Neglected Child means a child:

- a. Who has been abandoned by his parents, guardian, or custodian; or
- b. Who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental or emotional health, when it is established that his health has suffered or is very likely to suffer serious impairment; and the deprivation is not due primarily to the lack of financial means of the parents, guardian or custodian.

Note: A child who is under treatment solely by spiritual means through prayer, in accordance with the tenets of a recognized religion by a duly accredited practitioner thereof, shall not for that reason alone be considered to be neglected.

4. Nature and content of Report

- a. Oral - immediately by telephone or otherwise.
- b. Written - within 48 hours if requested.
- c. Content - if known.
 1. Name and address of the child suspected of being neglected or abused.
 2. Name of parents or persons caring for child.
 3. Specific information indicating neglect or the nature of the abuse (including any evidence of previous injuries.)
 4. Identity of parents or persons suspected of being responsible for such neglect or abuse.
 5. Any other information, which might be helpful or is required by the bureau.

5. Immunity from Liability

Anyone who makes a report in good faith is immune from any liability, civil or criminal. The same immunity applies to participation in any investigation by the bureau or judicial proceedings resulting from such a report.

6. Privileged Communication

"The privileged quality of communication between a professional person and his patient or client, except that between attorney and client, shall not apply to a proceedings instituted pursuant to this chapter and shall not constitute grounds of failure to report as required by this chapter."

7. Penalty

Violation of any part of the New Hampshire Child Protection Act, including failure to report is punishable by law. "Anyone who knowingly violates any provision of this subdivision shall be guilty of a misdemeanor." (RSA 169-C:39.) In New Hampshire, a misdemeanor is punishable by up to one year's imprisonment, a one thousand-dollar fine, or both.

RESOURCE VIII

DIVISION FOR CHILDREN YOUTH AND FAMILIES (DCYF) INTAKE PROCEDURES

The Central Intake Unit receives the initial reports, and refers reports of domestic violence to the District Office Assessment Supervisor when:

- ◆ The child is reported to be residing at the site of the domestic violence and has suffered or is likely to suffer an injury or physical contact as a result;
- ◆ The child is reported to be emotionally injured, unable to function at normal developmental age, unable to perform daily activities (regression as seen by changes in ability to perform daily activities such as eating, sleeping, toileting) as a result of the domestic violence and the reporter can state specific emotional or physical behaviors being exhibited by the child as a result of the domestic violence;
- ◆ Law enforcement officials involved in a domestic violence dispute request DCYF assistance due to harm or a threat of harm to a child;
- ◆ A credible report is received of domestic violence occurring on a regular basis in a household where infants or children reside as substantiated by law enforcement or others with specific details of frequency and severity;
- ◆ Ordered by the Superior Court or the District Court, pursuant to RSA 173-B:6 III;
- ◆ The use of guns or knives in the domestic violence incident.

Factors associated with domestic violence that may be considered include:

- ◆ Threats of homicide or suicide;
- ◆ Fantasies of homicide or suicide;
- ◆ Depression;
- ◆ Use of or threats involving the use of weapons;
- ◆ Obsessive about partner or family;
- ◆ Rage;
- ◆ Drug or alcohol consumption;
- ◆ Pet or property abuse;
- ◆ Access to battered victim or family;
- ◆ Escalation of risk taking; or
- ◆ History of violence.

If the Intake staff determines that the call does not meet the criteria for a credible report, no referral is made to the Assessment Supervisor. However, if the caller indicated an awareness of domestic violence in the family, the caller must be advised of options and resources available to the victim (crisis centers, shelters, and law enforcement) and the means of accessing those services in his or her community.

RESOURCE IX

A. GROUND FOR DENIAL OF RETURN OF FIREARMS AND AMMUNITION

In general, if a defendant is subject to a valid protection order issued by any other court, or has ever been convicted of a qualifying misdemeanor crime of domestic violence, the defendant will not be entitled to return of the firearms and ammunition. See the discussion under Part A: Relinquishment, for restrictions pertaining to civil protection orders.

Federal law [18 USC sec. 922 (g)(9)] prohibits defendants who have been convicted of a qualifying misdemeanor crime of domestic violence from ever possessing a firearm. Although the statute was passed in 1996, it applies to convictions before and after the effective date.

NOTE: In determining whether there is cause to deny a defendant's request for return of firearms, the Department of Safety will review the defendant's record for any indication about whether the defendant is subject to any of the federal or state prohibitions listed below.

B. FEDERAL PROHIBITIONS

Under federal law, individuals who fall within certain categories are prohibited from owning or possessing firearms. These categories include:

- ◆ *Persons subject to either an outstanding final domestic violence protection order or a temporary order which requires relinquishment of firearms, and the order was issued against the defendant in New Hampshire or elsewhere in the country (including all states, territories, tribal courts and possessions);
- ◆ Persons who have been convicted of any qualifying misdemeanor crime of domestic violence, regardless of where the conviction occurred;
- ◆ Persons who are aliens and have illegally or unlawfully entered the United States;
- ◆ Persons who are not United States citizens;
- ◆ Persons who have been adjudicated as a mentally ill or have been committed to a mental institution;
- ◆ Persons who have been dishonorably discharged from the military;
- ◆ Persons who are unlawful users of or are addicted to any controlled substance;
- ◆ Persons who have been convicted of a felony under state or federal law (that is, convicted of an offense punishable by imprisonment of more than one year); or
- ◆ *Persons who are under indictment for a felony.
- ◆ Persons who are subject to a court order, which restrains them from harassing, stalking or threatening an intimate partner or the child of an intimate partner.
- ◆ Except for subparagraphs * above, any of the remaining categories constitute permanent restrictions against possession of firearms.

Two additional provisions of the Gun Control Act, 18 USC sec. 922(d)(8) and (d)(9), make it a crime to knowingly transfer (or sell) a firearm or ammunition to any person who is precluded from possessing a firearm or ammunition.

C. STATE PROHIBITIONS

If a defendant is currently on probation or parole, or is subject to a bail order prohibiting possession, the firearms and ammunition shall not be returned. See Superior Court Rule 107(f) and District Court Rule 2.17 (f).

D. GROUNDS FOR DENIAL OF DEADLY WEAPONS

If the defendant is requesting return of specified deadly weapons only, (i.e., not including firearms and ammunition), the court **must** determine whether the defendant is a convicted felon and, if so, whether the defendant is barred from owning or possessing the weapons under RSA 159:3.

NOTE: RSA 159:3 prohibits certain felons from owning or possessing dangerous weapons such as metallic knuckles, swords, pistol canes, daggers, stilettos, etc.

NOTE: There is no federal law concerning return of deadly weapons other than firearms and ammunition.

RESOURCE X.
PHOTOGRAPH TEMPLATE
(8½ X 5 ½ paper)

FRONT

_____ **POLICE DEPARTMENT**

PHOTOGRAPHER: _____

DATE: _____ **TIME:** _____

LOCATION: _____

INCIDENT: _____

ROLL # _____

PHOTOGRAPH TEMPLATE
(8½ X 5 ½ paper)

BACK

PHOTO LOG

1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	
16.	
17.	
18.	
19.	
20.	
21.	
22.	
23.	
24.	
25.	
26.	
27.	
28.	
29.	
30.	
31.	
32.	
33.	
34.	
35.	
36.	